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**Dilapidations
Claim by
a Landlord**

What is a **Dilapidations Claim?**

In its simplest form a dilapidations claim is an allegation of breach of contract and as such is actionable in law.

A dilapidations (dilaps) claim by a landlord is where they feel that you (the tenant) have not adequately complied with the requirements of the lease contract, known as covenants. The claim will initially relate to the following items:

- **Repair**
- **Redecoration**
- **Alteration and Reinstatement**
- **Statutory obligations**

... if these obligations aren't complied with before the property is yielded up (given back) then further claims may be made against you for loss of rent, rates, etc.

Repairing obligations

Your lease will have repairing obligations. Most modern leases are full repairing and insuring (known as FRI leases), this means that when you sign it you become responsible for repairs, maintenance and the building's insurance. The landlord's dilapidations claim will identify those parts of the premises that, in their eyes, have not been kept to the standard of repair set out within the lease.

Decoration

It is common for most leases to have a decoration covenant stipulating redecoration at certain intervals (every 3 or 5 years etc) as well as at the end of a lease. The landlord can serve an interim schedule of dilaps (mid-term) and a terminal schedule (at the end of the lease) if he feels the obligation to redecorate isn't being or hasn't been met. Landlords may also build an argument around the lack of redecoration as set out within the lease, being a cause for additional repair, e.g. replacement of rotten timber window and door frames.

If you need help and advice with regard to leases, dilapidations, schedules of condition, dilaps claims, scott schedules, building surveys, structural reports, engineers reports, specific defects report, structural surveys, home buyers reports or any other property matter please call 0151 486 3437 for a friendly chat.

Alteration and reinstatement

At the end of the lease your landlord may require you to reinstate the property to its original configuration (as it was before the lease started). Unless you have adequate records of how the property looked at commencement of the lease how can you prove you are handing the property back in no better or worse condition than when you took it on?

A common problem is where the tenant feels that because he has spent £50k of his own money by creating extra office space or a mezzanine floor the property is more lettable than it was when he took it on. Unfortunately it isn't the tenant's decision as to whether the property is more lettable, it is the landlord's decision and he has the right, assuming that it is stipulated in the lease, to ask for the property to be returned to its original configuration... at the full expense of the tenant.

Tip 1: Instructing a Chartered Surveyor (prior to signing the lease) to carry out a survey known as a Schedule of Condition complete with photographic evidence will record the condition of the property and any landlords installations at that given time. The schedule will be appended to the lease and will form the benchmark for the return condition of the property at the end of the lease.

Tip 2: Tenants should ALWAYS obtain written consent from their landlord prior to undertaking any alterations to the building (most leases will include a clause stipulating this requirement anyway). Such written permission is known as a Licence for Alteration, not only will this be your consent to undertake the works but a proper licence will also stipulate what the landlord's reinstatement position is. It is important to know his position before you start the works so that you can budget for the cost of returning the property to its original configuration at the end of the lease. A Chartered Surveyor will prepare the Licence application on behalf of the tenant.

Statutory obligations

This can be a very onerous clause and is present in most modern leases requiring the leaseholder/tenant to meet any statutory obligations, even if these are new and have been formed after the lease.

Some examples are:

- Complying with the Control of Asbestos Regulations – *the duty to manage asbestos*
- The Disability Discrimination Act – *ensuring suitable access in the approach to and within the building for the less-abled/disabled*
- The Regulatory Reform Fire Safety Order – *fire risk assessments*

What does yielding up mean?

Yielding up is simply the requirement to return the property in the condition as stipulated in the lease. This may have further additional clauses over and above those already mentioned.

The **Dilapidations Claim** doesn't stop there

All of the above once explained seem relatively self-explanatory, although the detail of each one can be argued over forever.

1. Professional fees

A competently written lease will have clauses relating to the professional fee costs incurred by the landlord in serving the dilapidations schedule and this should be identified as one of your potential future costs.

2. Consequential losses

There are many consequential losses that the landlord can claim for. The RICS (Royal Institution of Chartered Surveyors) Guidance Notes on Dilapidations gives the following list:

- Legal fees in connection with the service of the schedule (schedules are served by solicitors)
- Administration of the building works envisaged by the schedule
- VAT
- Holding costs expected to be incurred before re-letting or sale, as the case may be
- Loss of rent until the end of any works and during any additional marketing period required as a consequence
- Breaks liability
- Insuring, security, energy, including costs reflected in the building works claim
- Loss due to the lack of service charges
- Financial costs including interest
- Preparation of the schedule (which we have already mentioned)
- Surveyors fees (which we have already mentioned)

Remember, all of the above is dependent upon the specific wording of the lease.

We hope you found this article interesting and if you have any experiences that you feel should be added to this article that would benefit others, then please do not hesitate to contact us.

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